

BEFORE THE HARYANA ELECTRICITY REGULATORY COMMISSION

BAYS No. 33-36, SECTOR-4, PANCHKULA- 134112, HARYANA

Case No. HERC/PRO – 25 of 2019

Case No. HERC/PRO – 32 of 2019

DATE OF HEARING : 10.09.2019

DATE OF ORDER : 16.09.2019

IN THE MATTER OF:

Complaint under section 142 and 146 of Electricity Act 2003 for contravention and non-compliance of orders dated 22.02.2019 passed by this Hon'ble Commission in PRO No 4 of 2018 titled as B E Office Automation Products Private Limited Versus Orris Infrastructure Private Limited

Case No. HERC/PRO – 25 of 2019

Petitioner

B.E. Office Automation Products Private Limited

V/s.

Respondent

1. Dakshin Haryana Bijli Vitran Nigam, Hisar
2. Shri Shatrujeet Kapur, CMD, DHBVN
3. Shri S.K. Bansal, Director Operations, DHBVN
4. Shri Anil Kumar Goyal, SE (OP), DHBVN, Gurugram
5. Shri Ranjan Rao, Executive Engineer (OP), Manesar
6. Shri Kuldeep Yadav, SDO (OP), Sub-Division Manesar
7. Orris Infrastructure Private Limited

Case No. HERC/PRO – 32 of 2019

Petitioner

Orris Infrastructure Private Limited

V/s.

Respondent

1. Dakshin Haryana Bijli Vitran Nigam, Hisar
2. Shri Shatrujeet Kapur, CMD, DHBVN
3. Shri S.K. Bansal, Director Operations, DHBVN
4. Shri Anil Kumar Goyal, SE (OP), DHBVN, Gurugram
5. Shri Ranjan Rao, Executive Engineer (OP), Manesar
6. Shri Kuldeep Yadav, SDO (OP), Sub-Division Manesar
7. B.E. Office Automation Products Private Limited

On behalf of B.E. Office Automation
Products Private Limited

1. Shri Tarun Singla, Advocate
2. Shri Amit Yadav, Director
3. Shri Ravinder Kumar

On behalf of Orris Infrastructure
Private Limited

1. Shri Atul Kumar
2. Shri Surjeet Bhadu, Advocate

On behalf of DHBVN

1. Shri Ranjan Rao, XEN

QUORUM

Shri D.S. Dhesi, Chairman
Shri Pravindra Singh, Member
Shri Naresh Sardana, Member

ORDER

1) Brief Background of the Case

PRO – 25 of 2019

1.1) M/s B.E. Office Automation Products Private Limited (hereinafter referred to as “BE Office”) has filed the Petition No. HERC/PRO – 25 of 2019. The Petition is summarised as follows:

- a) The petitioner had filed a petition being PRO No. 4 of 2018 before Hon’ble Commission under Regulation 5.5 of Regulation No. HERC/27/2013 [Single Point Supply Regulations] read with Section 94 of Electricity Act, 2003 for seeking directions to respondent No. 7 to provide electricity meter & electricity to the complainant’s/petitioner’s 82 flats and 2 Shops in Group Housing Colony developed under License No. 39 of 2009 and License No. 99 of 2011 granted by Directorate of Town & Country Planning, Haryana without demanding any charges other than or higher than Domestic Supply Tariff approved by this Hon’ble Commission.
- b) The Hon’ble Commission disposed of aforesaid petition being PRO No.4 of 2018 vide Order dated 22.02.2019, with following directions:

“In view of above, Commission directs the respondent No. 3 as under:-

- 1. To connect the supply to 82 flats and two shops/villas etc. of the petitioner with the electricity supply upon payment of proportionate share cost of single point supply received by the distribution licensee/respondent No. 3 from the developer/respondent No. 1 i.e., the cost of 11 KV line, controlling equipment at licensee substation and*

security paid to the licensee subject to petitioners fulfilling the necessary terms and conditions specified under the regulations.

Provided that the obligation of the petitioner to pay/recover proportionate charges shall be subject to final determination of the ongoing arbitration dispute between the parties and shall be subject to the determination of rights by the court of competent jurisdiction”

2. The respondent No.3 is further directed to intimate the proportionate charges in lieu of cost of connection in accordance with the share of the petitioner within 7 days of the order and the respective respondents to connect the supply immediately on depositing the said requisite amount by the petitioner.”

- c) Present respondent no.7 was respondent no.1 and present respondent no.1 i.e. DHVBN was respondent no.3 in aforesaid petition being PRO No. 4 of 2018.
- d) Upon receipt of aforesaid orders dated 22.02.2019, representatives of complainant/petitioner personally met respondent no.5 & 6 with a request to make calculations in terms of this Hon'ble Commission's order dated 22.02,2019. In one of such meetings held in the office of respondent no.5 on 15.04.2019, representatives of respondent no.7 also participated wherein they asked respondent no.5 to include amount spent by them for Internal Electrical Infrastructure of said colony in the calculation to be made pursuant to this Hon'ble Commission's orders dated 22.02.2019. Complainant/petitioner immediately refuted said claim/request of respondent no.7 and even submitted a written representation dated 17.04.2019 to respondents no. 2, 4, 5, and 6.
- e) The respondent no.1 (acting through respondent no.5 and 6) made calculations in purported compliance of this Hon'ble Commission's order dated 22.02.2019 and provided the same to complainant/petitioner vide Memo No.364 dated 09.05.2019. The calculations made by respondent no.1 (acting through respondent no.5 & 6) are highly exaggerated and includes extra amounts, which were not permitted by this Hon'ble Commission.

- f) That it is submitted that while making the calculations, respondent no.1 could have included/considered only-
- (a) the amounts received by DHBVN/Distribution Licensee/Respondent no.1 from Respondent no.7 towards:-
 - (i) the cost of 11 KV Line
 - (ii) controlling equipment at substation of DHBVN
 - (b) security paid to DHBVN
- g) The cost of Internal Electrical Infrastructure, within the colony incurred by respondent no.7 could not have been included/considered by respondent no.1 for making calculations in compliance of this Hon'ble Commission's order dated 22.02.2019, inter alia, for following reasons:
- (i) Because cost of Internal Electrical Infrastructure has not been received by Distribution Licensee (i.e., DHBVN).
 - (ii) Because cost of Internal Electrical Infrastructure is not the cost of 11 KV Line
 - (iii) Because cost of Internal Electrical Infrastructure is not the cost of controlling equipment at the DHBVN's sub-station
 - (iv) Because cost of Internal Electrical Infrastructure is not security paid to DHBVN.
 - (v) Because controlling equipment at substation of DHBVN are totally different from equipment installed by respondent No.7 inside the group housing colony.
 - (vi) Because regulation 5.1 (b) of Single Points Supply Regulations no. HERC/27/2013 provides that "The GHS/Employer/Developer/RWA will install, operate & maintain all infrastructure, including substations/transformers, required for distribution of electricity within the premises of the GHS/Colony at its/his own cost." Hence also respondent no.7 cannot recover cost of Internal Electrical Infrastructure from complainant/petitioner.
 - (vii) Because this Hon'ble Commission never permitted respondent no.7 to recover cost of Internal Electrical Infrastructure from complainant/petitioner.
- h) The respondent no.1 has included a sum of Rs.1,60,89,093/- as the amount of Bank Guarantee submitted by respondent no.7 towards cost of

extra infrastructure for shifting the load of colony on 33 KV line. However, it may be noted that respondent no.7 has yet not incurred said cost therefore it is not entitled to any share of said cost at this stage. In this regard it is submitted that:-

- (i) Petitioner may be allowed to deposit its share of cost of extra infrastructure for shifting the load of colony on 33 KV line in terms of this Hon'ble Commission's order dated 22.02.2019, in an Escrow Account with any bank with direction to the bank to release the amount so deposited to respondent no.7 immediately upon issuance of certificate of completion of said works by respondent No. 1/DHVBN/Distribution Licensee; or
 - (ii) Petitioner may kindly be allowed to deposit its share of cost of extra infrastructure for shifting the load of colony on 33 KV line in terms of this Hon'ble Commission's order dated 22.02.2019 with respondent No. 1/DHVBN/Distribution Licensee, with direction to release the said amount to respondent No. 7 immediately on completion of said works;
- i) Considering wrong calculations and including items/expenditures not permitted by the Hon'ble Commission amounts to contravention and non-compliance of this Hon'ble Commission's order dated 22.02.2019.
- j) The respondent no. 5 & 6 are subordinates to respondent no.2, 3 & 4. Respondent no. 2, 3 & 4 are vicariously liable for the acts of respondent no. 5 & 6. Be that as it may, it is submitted that the liability to make correct calculations in terms of this Hon'ble Commission's order dated 22.02.2019 was that of respondent no.1, which respondent no.1 did not make therefore respondent no.2 to 6 who are in charge of and responsible of acts and affair of respondent no.1 are personally liable for the consequences of failure of respondent no.1 to comply with this Hon'ble Commission's order dated 22.02.2019.
- k) The respondent no.1 has not given any reason as to why complainant's/petitioner's representation dated 17.04.2019 should not be accepted. It is submitted that extra amounts have been included by respondent no.1 in its calculation dated 09.05.2019 only to cause illegal and unjust benefit to respondent no.7. Further, respondent no.1 has failed

to comply with its statutory obligation of providing electricity and has further failed to comply with this Hon'ble Commission's order dated 22.02.2019, within time allowed by this Hon'ble commission and ultimately deliberately made exaggerated calculation ignoring complainant's/petitioner's representation dated 17.04.2019 with objective to cause unjust benefit to respondent no. 7 and to harass complainant/petitioner. Hence respondent no.1 is liable to penalty of Rs. 1000/- per day for each of complainant's/petitioner's 82 flats and 2 shops in terms of Section 43(3) of Electricity Act, 2003 with effect from 25.01.2018 i.e., the date when complainant/petitioner filed aforesaid petition being PRO No.4 of 2018 before this Hon'ble Commission.

1.2) Accordingly, BE Office has prayed as follows:

“

- (a) *exclude amount of Bank Guarantee/Costs of Internal Electrical Infrastructure from calculations of amount payable by complainant/petitioner in terms of order dated 22.02.2019 passed by this Hon'ble Commission in PRO No. 4 of 2018.*
- (b) *direct payment of complainant's/petitioner's share towards cost of extra infrastructure for shifting the load of colony on 33 KV line in accordance with para 8(i) or 8(ii) of this complaint/petition or in such other manner, which this Hon'ble Commission deem fit and proper.*
- (c) *take appropriate action against respondent no.1 to 7, for non-compliance of orders dated 22.02.2019.*
- (d) *impose appropriate penalty on respondent no.1 to 7 under section 142 of Electricity Act, 2003.*
- (e) *punish respondent nos. 1 to 7 with imprisonment of 3 months and fine under section 146 of Electricity Act, 2003.*
- (f) *direct respondent No. 7 to immediately comply its part of this Hon'ble Commission's order dated 22.02.2019 passed in PRO No. 4 of 2018*
- (g) *direct respondent No. 1 to immediately provide or cause providing of electricity to complainant/petitioner for all of its 82 flats and 2 shops in Group Housing Colony developed under License No. 39 of 2009 and License No. 99 of 2011 granted by Directorate of Town & Country Planning, Haryana without demanding any charges other than or higher than, what has been allowed by this Hon'ble Commission. ”*

PRO – 32 of 2019

1.3) M/s Orris Infrastructure Private Limited (hereinafter referred to as “Orris”) has filed the Petition No. HERC/PRO – 32 of 2019. The Petition is summarised as follows:

- a) B.E. Office filed a petition being PRO No. 4 of 2018 before this Hon’ble Commission under Regulation 5.5 of Regulation No. HERC/27/2013 [Single Point Supply Regulations] read with Section 94 of Electricity Act, 2003 for seeking directions to the present petitioner to provide electricity meter & electricity to the 82 flats and 2 Shops allotted to Respondent no. 7 in Group Housing Colony developed under License No. 39 of 2009 and License No. 99 of 2011 granted by Directorate of Town & Country Planning, Haryana without demanding any charges other than or higher than Domestic Supply Tariff approved by this Hon’ble Commission.
- b) The Hon’ble Commission disposed of aforesaid petition being PRO No. 4 of 2018 vide Order dated 22.02.2019, upon receipt of this order, representatives of complainant / petitioner personally met respondent No. 5 & 6 with a request to make calculations in terms of this Order dated 22.02.2019. The petitioner herein submitted a detailed calculation to them for compliance of order of this Hon’ble Commission dated 22.02.2019.
- c) The respondent No. 1 (acting through respondent no. 5 and 6) made calculations in purported compliance of this Hon’ble Commission’s order dated 22.02.2019 and provided the same to complainant/petitioner vide Memo No. 364 dated 09.05.2019. The calculations made by Respondent No. 1 (acting through respondent No. 5 & 6) are deficient and ignoring the essential costs as incurred by the petitioner and also directed by this Hon’ble Commission.
- d) While making the calculations, respondent No. 1 has included/considered following amounts:

| |
|---|
| Compliance of order dated 22.02.2019 passed by Hon’ble Haryana Electricity Regulatory Commission in PRO No. 04 of 2018 titled as “B.E. Office Automation Product Pvt. Ltd. Vs Orris Infrastructure Pvt. Ltd.” |
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| | | |
|---|---|--------------------|
| 1 | Cost of 11KV line occurred for release of partial load 1 MVA carried out by the builder under self execution scheme | 17423272.00 |
| 2 | Security | 13094000 |
| 3 | Bank Guarantee as per HERC norms 4.12.2 of regulation HERC 34/2016 dated 26.07.2005 & DHBVN S/C No. D-42/2014 of extrnal infra i.e. 33KV line ultimately shifting on 33KV level as per sanctioned load & electrification plan | 16089093 |
| 4 | As per Electrification plan and load norms approved by HERC, the ultimate load of Society/Builder is 13.084 MW / 14.537 MVA. | |
| | As per HERC regulation 34/2016 dated 26.07.2016 & DHBVN S/C No. D-42/2014 internal infra as per ultimate load, the BG submitted by the builder or yet to be submitted | |
| A | Ultimate Load BG = 14.537 MVA x 4793185 x 1.5 = 104517796.00 | 104517796.00 |
| B | Internal Electrical Infrastructure Developed = 4 MVA x 4793185 x 1.5 = 28759110.00 | 28759110.00 |
| C | BG of Internal Electrical Infrastructure submitted | 39640131.00 |
| D | Balance BG of Internal Electrical Infrastructure to be submitted | 36118555.00 |
| | Total Expenditure | 151124161.00 |
| | Permissible FAR as per DTP approved layout plan | 2215808 |
| | Pro rata expenses per Sq. Feet i.e. total expenses divided by total area of project in Sq. Feet | 68.20 per Sq. Feet |

Note: - DHBVN demand the BG @ 1.5 times the value arrived at per MVA (for ultimate load)/KM (for length of 33KV line) to meet the price escalation after finalisation of per MVA/KM rates by the Deptt.

- e) The Respondent No. 1 while calculating the amount ignored the cost of Internal Electrical Infrastructure, which related strictly to transformer, HT panel, LT Panel, DG Set, Power cables (LT & HT) and rising shaft internal electrical work which is liable to be shared by every allottee. The petitioner herein submitted a detailed calculation to Respondent No. 1 for compliance of order of this Hon'ble Commission dated 22.02.2019.
- f) The transformer, HT panel, LT Panel, DG Set, Power cables (LT & HT) and rising shaft internal electrical work are actually the extension of the external infrastructure into the colony and becomes part of sub-station as well as main common electrical infrastructure. The allottees are liable to share because the cost of equipment as well as its day to day maintenance. It is important to mention that either if some equipment is damaged/becomes faulty, the same is replaced at the cost of allottees shared amongst them. All the allottees are ready and willing to share the said cost, however, the

Respondent No. 7 is settling scores with the present petitioner by harassing them and to put pressure upon them to take advantage in other multiple litigations which are going on between parties.

- g) The Respondent No. 7 - M/s B.E. Office wants everything for free. The conduct of the Respondent No. 7 is explained in detail alongwith judicial orders in the reply to main PRO-4/2018. B.E. Office is also not making payment of outstanding dues of Interest free maintenance security as well as club membership charges despite of repeated requests. The allotment agreement clearly provides that the present petitioner can disconnect the electricity due to non-payment of Interest free maintenance security and other charges. It may be appreciated that unless such check is put on the defaulters like Respondent No. 7, they would spoil the quality and harmony of the entire project and will cause prejudice to the interest of hundreds of allottees. The respondent no. 7 has also not paid Common Area Maintenance Charges since January, 2017.
- h) In case the outstanding dues of common area maintenance and club membership charges are not cleared, any direction for electricity connection to Respondent no. 7 would be contrary to the terms of allotment agreement which is a private legislation and the parties are bound by the same. By excluding the essential amount incurred by the petitioner herein, the Respondent No. 1 has caused serious prejudice to the petitioner. By virtue of this wrong calculation, the petitioner has been made to bear the unwanted cost which otherwise is a liability of the allottee i.e. Respondent no. 7.
- i) The Respondent no. 7 is no ordinary consumer, rather, is a collaborator builder with the petitioner who is not paying his legitimate dues payable to the petitioner and has willingly and wrongly entangled the petitioner in unwanted litigation just to harass and arm twist the petitioner. Further, Respondent No. 7 is trying to mislead this Hon'ble Court portraying as if the 82 Flats and 2 Shops are inhabited and the electricity is required for human needs. To the contrary, the true facts are, the said 82 Flats and 2 Shops are lying vacant. The Respondent No. 7 is trying to sell the said flats and shops which has come to his share being a collaborator developer. Therefore, the Respondent no. 7 does not deserve the leniency of this Hon'ble Commission.

- j) The respondents No. 5 & 6 are subordinates to respondent No. 2, 3 & 4. Respondent No. 2, 3 & 4 are vicariously liable for the acts of respondent No. 5 & 6. The liability to make correct calculations in terms of this Hon'ble Commission's order dated 22.02.2019 was that of respondent No. 1, which respondent No. 1 did not make therefore respondent no. 2 to 6 who are incharge of and responsible for acts and affair of respondent no. 1 are personally liable for the consequences of failure of respondent no. 1 to comply with this Hon'ble Commission's order dated 22.02.2019.
- k) That respondent No. 1 has not given any reason as to why calculation of amounts given by present complainant M/s Orris Infrastructure Pvt. Ltd., was not be accepted. It is submitted that legitimate amounts have been not included by respondent no. 1 in its calculation dated 09.05.2019 only to cause illegal and unjust benefit to respondent No. 7 - B.E. Office.
- l) That respondent no. 1 has failed to comply with this Hon'ble Commission's order dated 22.02.2019, within time allowed by this Hon'ble Commission and ultimately deliberately made deficient calculation with an objective to cause unjust benefit to respondent no. 7 and to harass petitioner. Hence respondent no. 1 is liable to penalty of Rs. 1000/- per day in terms of Section 43(3) of Electricity Act, 2003.

1.4) Accordingly, Orris has prayed as follows:

“

- (a) *Include the amount of Rs. 28,25,38,189/- in the calculation as cost of transformer, HT panel, LT Panel, DG Set, Power cables (LT & HT) and rising shaft internal electrical work and accordingly determine the cost per sq. ft. which is liable to be shared by every allottee including Respondent no. 7.*
- (b) *Direct the Respondent no. 7, M/s B.E. Office Automation Product Pvt. Ltd. to make the payment of its share to the present petitioner immediately without any further contest and litigation.*
- (c) *Direct the Respondent no. 7, M/s B.E. Office Automation Product Pvt. Ltd. to make the payment of outstanding dues of Interest free maintenance security as well as club membership charges which are not being paid by them despite of repeated requests.*

(d) Not to pass an order for connecting electricity to 82 Flats and 2 shops allotted to Respondent No. 7, M/s B.E. Office Automation Product Pvt. Ltd. unless they clear the dues of amount determined under present proceedings as well as the payment of outstanding dues of Interest free maintenance security as well as club membership charges.”

2) Proceedings

- 2.1) The first hearing in Case No. HERC/PRO – 25 of 2019 was held on 28/05/2019. The Ld. Counsel appeared on behalf of BE Office and briefed his case to the Commission mainly summarizing his written submissions that DHBVN has not appropriately computed proportionate charges as was directed by the Commission in its Order dated 22/02/2019. The Commission inquired from the Petitioner whether they agreed to pay the undisputed amount within a week. The Petitioner responded in affirmative. Accordingly, the Commission directed the Respondents to provide the electric supply to the Petitioner after deposition of the undisputed amount by the Petitioner, as committed by them, within a period of one week from the date of receipt of this Order.
- 2.2) Further the matter was heard on 18/06/2019. The Ld. Counsel appeared on behalf of the Petitioner and as per directions of the Hon'ble Commission in its Interim Order dated 28/05/2019, brought a cheque bearing number 125680 of Punjab National Bank for an amount of Rs. 12,55,748 payable to Orris Infrastructure Pvt. Ltd. BE Office's Ld. Counsel handed over the same to Orris, during hearing but the Ld. Counsel for Orris hesitated to receive the cheque on grounds that the amount was not appropriate.
- 2.3) After hearing the arguments of both parties, the Commission directed B.E. Office to submit Fixed Deposit or Bank Guarantee in the form as mandated in the Note 14 of the Tariff Schedule of FY 2019-20 for the balance undisputed amount to the Orris which shall be encashed by the Orris after completion of external infra i.e., 33 kV line as per sanctioned load and electrification plan. The said Fixed Deposit or Bank Guarantee was to be submitted on or before 24th June, 2019.
- 2.4) Accordingly, BE Office agreed to submit the Fixed Deposit or Bank Guarantee of the balance undisputed amount to the Orris. The Orris agreed to the proposal

and accepted the above-mentioned cheque under protest. Further, the Commission directed Orris Infrastructure Pvt. Ltd to provide electric supply to the Petitioner on or before 24th June, 2019. The Ld. Counsel for the Orris also debated about the various charges claimed as undisputed amount by the Petitioner. Accordingly, the Commission directed Orris to submit on affidavit, before the next date of hearing, having details of charges whether those claimed by them are in line with the provisions of Electricity Act, 2003 and Regulations framed thereunder by the Commission.

- 2.5) Further, Orris filed Petition bearing No. 32/2019 and prayed before the Commission to include the amount of Rs. 28,25,38,189/- in the calculation of DHBVN as the cost of transformer, HT Panel, LT Panel, DG Set, Power cables (LT & HT) and rising shaft internal electric work and direct BE Office to make the payment of its shared cost.
- 2.6) The Commission in its Interim Order dated 28/06/2019 observed that both the cases i.e., PRO – 25 of 2019 and PRO – 32 of 2019 have been filed on account of determination of the proportionate charges by DHBVN in lieu of cost of connection by B.E. Office in light of the Order passed by the Commission on 22/02/2019 in Case No. HERC/PRO – 4 of 2018. As both the matters were inter related, therefore, the Commission found it appropriate to merge both the Petitions.
- 2.7) During the hearing held on 25/06/2019, the Ld. Counsel appeared on behalf of B.E. Office and in compliance to the Interim Order dated 19/06/2019, handed over Bank Guarantee No. SL-2527/BG/2018-19/13 of amount of Rs. 6,62,072/- to Ld. Counsel of Orris. The Ld. Counsel of B.E. Office and Orris argued at length over the charges required to supply electricity connection. The Ld. Counsel of B.E. Office submitted that as per their calculation and without considering cost of Internal Infrastructure for electricity the charges are approximately Rs. 21/sq. feet, however, Ld. Counsel of Orris submitted that such charges as determined by DHBVN in compliance to the Order in PRO 4 of 2018 are approximately Rs. 68/sq. feet. On enquiry from the Commission to Orris about the compliance of Interim Order dated 19/06/2019 for providing electricity supply connection to B.E. Office on or before 24th June, 2019, the Ld. Counsel submitted that they had yet not complied with the same. Further, the Commission observed that, as per directions of the Interim Order dated

19/06/2019, Orris had not submitted an affidavit whether charges claimed by them are in line with the provisions of Electricity Act, 2003 and Regulations framed thereunder by the Commission. The Commission took a serious note of the non-compliance of its Orders and again directed Orris to provide electricity supply connection to B.E. Office or any other flats where possession has been offered within a period of 2 (two) days from the receipt of this Order and submit its compliance report to the Commission.

2.8) Accordingly, for resolution of dispute on account of various electricity infrastructure cost to be paid by BE Office, the Commission constituted a committee comprising of Superintending Engineer/OP Circle, Gurugram-II and XEN OP Division Manesar, Gurugram to determine the proportionate charges as was mandated in the Commission's Order dated 22/02/2019 in Case No. HERC/PRO – 4 of 2018.

2.9) During the 4th hearing held on 18/07/2019, the Ld. Counsel appeared on behalf of B.E. Office and submitted that they have filed two applications as follows:

1st Application – Connection on 1st July '19 & Disconnection on 2nd July '19

2.10) On compliance of Interim Order dated 28/06/2019, Orris connected electricity to BE Office 21 flats on 01/07/2019 and obtained applicant's signatures showing status of electricity as "On" in said 21 flats. However, on the next date i.e., on 02/07/2019 when applicant offered to make advanced payment for use of electricity in said 21 flats, Orris again raised demand for disputed amounts like maintenance charges, IFMS, club charges etc. Orris also asked applicant to pay a sum of Rs. 14,550/- for every 2 BHK flats towards the minimum electricity charges for period prior to 01.07.2019. As electricity connections were provided on 01/07/2019, minimum electricity charges could not have been demanded for period prior to 01/07/2019. Other disputed charges like maintenance charges, IFMS, club charges etc., have no link with the supply of electricity.

2nd Application – Reconstitution of Committee

2.11) BE Office vide its application has submitted that as Executive Engineer 'OP', Manesar Division, DHBVN, Gurgaon has already made some calculations, which are challenged before the Hon'ble Commission, he should not be part

of the Committee and one or two senior officer(s) from DHBVN's Head office at Hisar should be made members of aforesaid committee.

- 2.12) Accordingly, acceding to the request of the BE Office, the Commission in its Interim Order dated 22/07/2019 re-constituted the committee comprising of Chief Engineer Commercial, DHBVN Hisar and Superintending Engineer OP Circle Gurugram-II to determine the proportionate charges as mandated in the Commission's Order dated 22/02/2019 in Case No. HERC/PRO-4 of 2018. The Executive Engineer OP Division Manesar was directed to assist the committee to make available all relevant record.
- 2.13) The matter was lastly heard on 10/09/2019 and the parties submitted their final arguments before the Commission. Further, in compliance of the Commission's directions in Interim Order dated 22/07/2019, XEN (DHBVN) submitted copy of the committee report dated 5/9/2019.

3) Commission's Analysis & Order

- 3.1) Having heard the parties and documents placed on record the Commission observes that in its Order dated 22/02/2019 in PRO 4 of 2018 the Commission directed Orris Infrastructure Pvt. Ltd. to connect supply to 82 flats and 2 shops of B.E. Office upon payment of proportionate shared cost of connection of Single Point Supply. Further, DHBVN was directed to intimate the proportionate charges in lieu of cost of connection in accordance with the share of B.E. Office. The relevant extracts of the said Order are as follows:

"In view of above, Commission directs the respondent No.1 as under:-

1. To connect the supply to 82 flats and two shops / villas etc. of the petitioner with the electricity supply upon payment of proportionate share cost of connection of Single Point Supply received by the distribution licensee / respondent No.3 from the developer / respondent No.1 i.e. the cost of 11 kV line, controlling equipment at the licensee substation and security paid to the licensee subject to the petitioners fulfilling the necessary terms and conditions specified under the regulations.

Provided that the obligation of the petitioner to pay / recover proportionate charges shall be subject to final determination of the ongoing arbitration dispute between the parties and shall be subject to the determination of rights by the court of competent jurisdiction.

2. The respondent No.3 is further directed to intimate the proportionate charges in lieu of cost of connection in accordance with the share of the petitioner within

7 days of the order and the respective respondents to connect the supply immediately on depositing the said requisite amount by the petitioner.”

- 3.2) Now, B. E. Office and Orris have filed the Petition bearing No. PRO 25 of 2019 and PRO 32 of 2019 wherein the dispute is regarding the computation of proportionate charges computed by DHBVN vide its memo no. 364 dated 09/05/2019.
- 3.3) As indicated in the preceding section, the matter has been heard at length by the Commission and in the Interim Order dated 22/07/2019, the Commission constituted a Committee comprising Chief Engineer Commercial, DHBVN Hisar and Superintending Engineer OP Circle Gurugram-II to determine the proportionate charges as mandated in the Commission’s Order dated 22/02/2019 in Case No. HERC/PRO-4 of 2018. The Executive Engineer OP Division Manesar was directed to assist the committee to make available all relevant record.
- 3.4) However, DHBVN vide its Memo No. Ch-86/SE/RA-610 dtd. 05/08/2019 submitted before the Commission that due to vacant post of CE/Commercial, DHBVN, Hisar, the SE/Commercial has been nominated by the management for committee in place of CE/Commercial, DHBVN, Hisar.
- 3.5) Accordingly, during the last hearing held on 10/09/2019 in compliance of the Commission’s directions in Interim Order dated 22/07/2019, XEN (DHBVN) submitted copy of the committee report dated 5/9/2019 to the Commission as well as to the Ld. Counsels of BE Office and Orris. The relevant extracts of the report are as follows:

“

...the following calculation has been finalised to determine the proportionate charges:

| | | |
|---|--------------|--------------------|
| <i>Cost incurred by the developer under self-execution scheme for 11 kv line for release of partial load (in Rs.)</i> | <i>A</i> | <i>1,74,23,272</i> |
| <i>Security (in Rs.)</i> | <i>B</i> | <i>1,30,94,000</i> |
| <i>Total amount received by DHBVN from the developer (in Rs.)</i> | <i>C=A+B</i> | <i>3,05,17,272</i> |
| <i>Bank guarantee as per prevalent norms for external infra i.e. 33 kv line ultimately shifting to 33 kv level as per sanctioned load and electrification plan (in Rs.)</i> | <i>D</i> | <i>1,60,89,093</i> |
| <i>Permissible FAR as per approved layout plan (in sq. ft.)</i> | <i>E</i> | <i>22,15,808</i> |
| <i>Pro rata expenses per sq. ft. (in Rs. /sq./ft.)</i> | <i>F=C/E</i> | <i>13.77</i> |
| <i>Pro rata BG amount per sq. ft. (in Rs./sq. ft.)</i> | <i>G=D/E</i> | <i>7.26</i> |

Applying these pro-rata rates on the flat-wise area details as provided by the petitioner, the total amount payable by them towards expenses borne by the developer comes to Rs. 12,55,748 and towards BG comes to Rs. 6,62,072...

As far as ensuring supply to the petitioner is concerned, the committee would like to submit that as on date, supply to 27 nos. flats and 2 nos. shops have been restored by M/s OP Manesar for ensuring uninterrupted power to the 82 nos. flats and 2 shops of M/s B.E.Office Automation Product Private Limited through M/s Orris Infrastructure Pvt. Ltd. However, it would be pertinent to submit that the switching mechanism of power supply to the aforementioned flats and shops of the petitioner is under the physical control of the Developer and is controlled through software by M/s Orris Infrastructure Pvt. Ltd. and thus, the onus lies on the developer to not disrupt services to the Petitioner and the Developer is bound by the order of the Hon'ble Commission. Any disruption by the Developer in this regard should be viewed as non-compliance of the order by the Developer."

3.6) During the hearing held on 10/09/2019, the Ld. Counsels appearing on behalf of BE Office and Orris agreed to the following directions of the Commission subject to outcome of their ongoing arbitration dispute and determination of rights by the court of competent jurisdiction:

- a) The committee report of SE Commercial (DHBVN), Hisar & SE (Op.-DHBVN), Circle II, Gurugram dated 05/09/2019 has to be adhered by BE Office and Orris.
- b) BE Office shall deposit the minimum monthly charges, as per applicable Tariff Order, to Orris Infrastructure Pvt. Ltd. from the date of handing over of flats to BE Office.

3.7) The Respondent DHBVN shall ensure compliance of the above directions of the Commission.

In view of above, the present Petitions are disposed off accordingly.

This Order is signed, dated and issued by the Haryana Electricity Regulatory Commission on 16/09/2019.

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|-------------------------|-------------------------|--------------------------|---------------------|
| Date: 16.09.2019 | (Naresh Sardana) | (Pravindra Singh) | (D.S. Dhesi) |
| Place: Panchkula | Member | Member | Chairman |